

South Dakota One Call Notification Board

Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

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July 19, 2006

Mark Stromseth
Eagle Excavating
16736 451st Ave
Watertown, SD 57201

Steve Lehner, Asst General Manager
Watertown Municipal Utilities
901 4th Avenue Southwest
Watertown, SD 57201-4107

RECEIVED
JUL 24 2006
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

The Enforcement Committee recommendation to resolve Complaint OC06-002 has been accepted by both parties involved in the complaint. The order closing this Complaint is attached.

This order will close all action on this complaint with the exception that the suspended portion of the penalty would be applicable should a further violation occur prior to June 30, 2007. Payment of the penalty was made on July 19, 2006.

Sincerely,

Larry L. Englerth
Executive Director

ENFORCEMENT COMMITTEE ACTION

OC06-002

Watertown Municipal Utilities vs. Eagle Excavating, Inc.

FINDINGS:

OC06-002

Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation

Allegation is made by Watertown Municipal Utilities that Eagle Excavating, Inc. commenced excavation at 3013 N. Serenity Drive in Watertown, SD, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

Eagle Excavating, Inc. did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System.

In reviewing the complaint filed by Watertown Municipal Utilities and the response from Eagle Excavating, Inc., the committee determined the following:

Eagle Excavating, Inc. had commenced excavation without providing advanced notification to the South Dakota One Call System.

Based on the information noted above, the Committee found that there was probable cause that Eagle Excavating, Inc. had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System.

RECOMMENDATION

OC06-002

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Committee found there was probable cause that Eagle Excavating, Inc. had violated SDCL 49-7A-5 by commencing excavation at 3013 N. Serenity Drive in Watertown, SD without providing advance notification to the South Dakota One Call System as required by statute.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

The committee recommends a penalty of five hundred dollars (\$500) with three hundred dollars (\$300) suspended on the following conditions:

1. Eagle Excavating, Inc. fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC06-002 by both parties.
2. Eagle Excavating, Inc. fully complies with the resolution of Complaint OC06-002 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC06-002.

COMMENTS:

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC06-002**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC06-002.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JULY 7, 2006.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC06-002

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC06-002 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Signature - Watertown Municipal

6/16/06

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC06-002 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC06-002.

Signature - Watertown Municipal

Date

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC06-002

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC06-002.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGED VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JULY 7, 2006.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC06-002

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC06-002 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

 7-1-6
Signature - Eagle Excavating Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC06-002 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC06-002.

Signature - Eagle Excavating Date

**BEFORE THE SOUTH DAKOTA ONE CALL
NOTIFICATION BOARD**

IN THE MATTER OF THE
COMPLAINT AGAINST EAGLE
EXCAVATING, LLC

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ORDER
OC06-002

On May 12, 2006, the South Dakota Public Utilities Commission received a complaint from Watertown Municipal Utilities against Eagle Excavating, LLC. Eagle Excavating, LLC did not dispute the allegation in the complaint that they had excavated without providing advance notice to the South Dakota One Call System but did provide background information on how the violation occurred and their previous history of utilizing the South Dakota One Call System.

On June 15, 2006, the Enforcement Committee of the South Dakota One Call Notification Board met and determined that probable cause exists in Docket OC06-002 in regards to the allegation that Eagle Excavating, LLC has violated SDCL 49-7A-5. The Enforcement Committee recommended a five hundred dollar (\$500.00) penalty with three-hundred dollars (\$300.00) suspended on the grounds that Eagle Excavating, LLC fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following the date of Eagle Excavating, LLC signing the Enforcement Committee Action Agreement and that Eagle Excavating, LLC fully comply with the resolution of this complaint by making payment of two-hundred dollars (\$200) within thirty days of the issuance of this order.

All interested parties agreed with the recommendations of the Enforcement Committee. By July 1, 2006, all interested parties had signed the Enforcement Committee Action Agreement.

ORDERED, that the terms and conditions of the Enforcement Committee Action Agreement and the signed Acceptance of the recommended resolutions by both parties shall be incorporated into this Order by reference and attached hereto, the same as if it was fully recited herein and shall as such be fully binding upon the parties to it; and it is

FURTHER ORDERED that the docket in this matter shall be closed.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A, specifically 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, 49-7A-26.

Dated at Sioux Falls, South Dakota, this 19th day of July, 2006.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

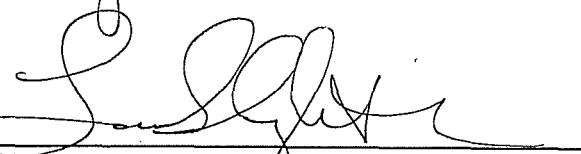
By: 

Larry Englerth, Executive Director

Date: July 19, 2006

BY ORDER OF THE SD ONE-CALL BOARD:


JERRY SCHROEDER, Chairman


Under the Authority and on Behalf of the
Chairman

LARRY ENGLERTH, Executive Director